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4 **UNITED STATES DISTRICT COURT**  
5 **DISTRICT OF NEVADA**

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7 NATIONSTAR MORTGAGE, LLC  
8 FEDERAL NATIONAL MORTGAGE  
9 ASSOCIATION  
10 FEDERAL HOUSING FINANCE AGENCY

11 Plaintiff(s),

12 v.

13 SFR INVESTMENTS POOL I, LLC  
14 TALASERA AND VICANTO  
15 HOMEOWNERS ASSOCIATION

16 Defendant(s).

Case No. 2:15-cv-00267-RFB-NJK

**ORDER**

17 **I. INTRODUCTION**

18 Before the Court are Plaintiffs Federal Housing Finance Agency (“FHFA”), Federal  
19 National Mortgage Association (“Fannie Mae”), and Nationstar Mortgage LLC’s (“Nationstar”) Joint Motion for Summary Judgment and Defendant Talasera and Vicanto Homeowners Association’s Motion for Summary Judgment. ECF Nos. 88, 89. For the following reasons, the  
20 Court grants Plaintiffs’ Motion.

21 **II. PROCEDURAL BACKGROUND**

22 Plaintiffs filed their complaint in this matter on February 13, 2015 and asserted claims for  
23 quiet title and declaratory relief. ECF No. 1. Defendant SFR Investments Pool I, LLC (SFR) filed  
24 a motion to dismiss on April 17, 2015. ECF No. 30. Defendant Talasera and Vicanto Homeowners  
25 Association (“HOA”) answered the complaint on that same date. ECF No. 33. On March 31, 2016,  
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1 the Court denied SFR's Motion to Dismiss without prejudice. ECF No. 58. On August 31, 2016,  
2 the Court granted a joint stipulation to stay proceedings in this case pending the issuance of the  
3 Ninth Circuit's mandate in Bourne Valley Court Trust v. Wells Fargo Bank, NA. 832 F.3d 1154  
4 (9th Cir. 2016), cert denied 137 S. Ct. 2296 (2017). On April 8, 2019, the Court lifted the stay.  
5 ECF No. 87. Plaintiffs filed their joint motion for summary judgment on May 13, 2019. ECF No.  
6 88. SFR filed opposition. ECF No. 91. Plaintiffs filed a reply. ECF No. 92. The HOA filed its  
7 motion for summary judgment on that same date. ECF No. 89. Plaintiffs opposed the motion and  
8 the HOA replied. ECF Nos. 90, 93.

### 11 **III. FACTUAL BACKGROUND**

12 The Court makes the following findings of undisputed and disputed facts.<sup>1</sup>

#### 13 **a. Undisputed Facts**

14 This matter concerns a nonjudicial foreclosure on a property located at 9147 Cantina Creek  
15 Court, Las Vegas, NV 89179 (the "property"). The property sits in a community governed by the  
16 HOA. The HOA requires its community members to pay HOA dues.

17  
18 Nonparty Magdolna Drafi borrowed funds from Ryland Mortgage Company to purchase  
19 the property in 2006. To obtain the loan, Drafi executed a promissory note and a corresponding  
20 deed of trust to secure repayment of the note. The deed of trust listed Ryland Mortgage Company  
21 as lender and Mortgage Electronic Registration Systems, Inc. ("MERS") as beneficiary and was  
22 recorded on March 27, 2006. MERS subsequently assigned its interest under the Deed of Trust to  
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26 <sup>1</sup> The Court takes judicial notice of the publicly recorded documents related to the deed of  
27 trust and the foreclosure as well as Fannie Mae's Single-Family Servicing Guide. Fed. R. Evid.  
28 201 (b), (d); Berezovsky v. Moniz, 869 F.3d 923, 932–33 (9th Cir. 2017) (judicially noticing the  
substantially similar Freddie Mac Guide); Lee v. City of Los Angeles, 250 F.3d 668, 690 (9th Cir.  
2001) (permitting judicial notice of undisputed matters of public record).

1 BAC Home Loans Servicing, LP, (“BAC”) as recorded on or about July 16, 2010. On May 15,  
2 2013, all beneficial interest in the Deed of Trust was assigned from Bank of America, N.A.,  
3 (“BANA”)—successor by merger to BAC Home Loans Servicing, LP—to Nationstar, as recorded  
4 on or about June 5, 2013.

5  
6 Draft fell behind on HOA payments. From April 13, 2012 through November 15, 2012, the  
7 HOA, through its agent, recorded a notice of delinquent assessment lien concerning past-due  
8 assessments, followed by a notice of default and election to sell, and finally a notice of foreclosure  
9 sale upon the property. The foreclosure sale occurred on February 15, 2013, and SFR purchased  
10 the property on that date.

11  
12 However, Fannie Mae previously purchased the note and deed of trust in April 2006. While  
13 its interest was never recorded under its name, Fannie Mae continued to maintain its ownership of  
14 the note and the deed of trust at the time of the foreclosure. At the time of the foreclosure sale,  
15 BAC was the servicer of the loan for Fannie Mae.

16  
17 The relationship between Fannie Mae and its servicers is governed by Fannie Mae’s Single-  
18 Family Servicing Guide (“the Guide”). The Guide provides that servicers may act as record  
19 beneficiaries for deeds of trust owned by Fannie Mae. It also requires that servicers assign the  
20 deeds of trust to Fannie Mae on Fannie Mae’s demand. The Guide states:

21  
22 The servicer ordinarily appears in the land records as the mortgagee to facilitate  
23 performance of the servicer’s contractual responsibilities, including (but not limited  
24 to) the receipt of legal notices that may impact Fannie Mae’s lien, such as notices  
25 of foreclosure, tax, and other liens. However, Fannie Mae may take any and all  
26 action with respect to the mortgage loan it deems necessary to protect its ...  
27 ownership of the mortgage loan, including recordation of a mortgage assignment,  
28 or its legal equivalent, from the servicer to Fannie Mae or its designee. In the event  
that Fannie Mae determines it necessary to record such an instrument, the servicer  
must assist Fannie Mae by [ ] preparing and recording any required documentation,  
such as mortgage assignments, powers of attorney, or affidavits; and [by] providing  
recordation information for the affected mortgage loans.

1           The Guide also allows for a temporary transfer of possession of the note when necessary  
2 for servicing activities, including “whenever the servicer, acting in its own name, represents the  
3 interests of Fannie Mae in ... legal proceedings.” The temporary transfer is automatic and occurs  
4 at the commencement of the servicer's representation of Fannie Mae. The Guide also includes a  
5 chapter regarding how servicers should manage litigation on behalf of Fannie Mae. But the Guide  
6 clarifies that “Fannie Mae is at all times the owner of the mortgage note[.]” Finally, under the  
7 Guide, the servicer must “maintain in the individual mortgage loan file all documents and system  
8 records that preserve Fannie Mae’s ownership interest in the mortgage loan.”  
9

10           Finally, the Guide “permits the servicer that has Fannie Mae’s [limited power of attorney]  
11 to execute certain types of legal documents on Fannie Mae’s behalf.” The legal documents include  
12 full or partial releases or discharges of a mortgage; requests to a trustee for a full or partial  
13 reconveyance or discharge of a deed of trust, modification or extensions of a mortgage or deed of  
14 trust; subordination of the lien of a mortgage or deed of trust, conveyances of a property to certain  
15 entities; and assignments or endorsements of mortgages, deeds of trust, or promissory notes to  
16 certain entities.  
17

18           In 2008, Congress passed the Housing and Economic Recovery Act (“HERA”), 12 U.S.C.  
19 § 4511 *et seq.*, which established the Federal Housing Finance Agency (“FHFA”). HERA gave  
20 FHFA the authority to oversee Fannie Mae. In accordance with its authority, FHFA placed Fannie  
21 Mae under its conservatorship in 2008. Neither FHFA nor Fannie Mae consented to the foreclosure  
22 extinguishing Fannie Mae’s interest in the property in this matter.  
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#### 24           **b. Disputed Facts**

25           The parties dispute the legal effect of the circumstances described above.  
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1                   **IV.     LEGAL STANDARD**

2                   Summary judgment is appropriate when the pleadings, depositions, answers to  
3                   interrogatories, and admissions on file, together with the affidavits, if any, show “that there is no  
4                   genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”  
5                   Fed. R. Civ. P. 56(a); accord Celotex Corp. v. Catrett, 477 U.S. 317, 322(1986). When considering  
6                   the propriety of summary judgment, the Court views all facts and draws all inferences in the light  
7                   most favorable to the nonmoving party. Gonzalez v. City of Anaheim, 747 F.3d 789, 793 (9th Cir.  
8                   2014). If the movant has carried its burden, the nonmoving party “must do more than simply show  
9                   that there is some metaphysical doubt as to the material facts .... Where the record taken as a whole  
10                  could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for  
11                  trial.” Scott v. Harris, 550 U.S. 372, 380 (2007) (alteration in original) (internal quotation marks  
12                  omitted). It is improper for the Court to resolve genuine factual disputes or make credibility  
13                  determinations at the summary judgment stage. Zetwick v. Cty. of Yolo, 850 F.3d 436, 441 (9th  
14                  Cir. 2017) (citations omitted).

15                   **V.     DISCUSSION**

16                  The Federal Foreclosure Bar, 46 U.S.C. § 4617(j)(3) resolves this matter. The Ninth Circuit  
17                  has held that the Federal Foreclosure Bar preempts foreclosures conducted under NRS Chapter  
18                  116 from extinguishing a federal enterprise’s property interest while the enterprise is under  
19                  FHFA’s conservatorship unless FHFA affirmatively consented to the extinguishment of the  
20                  interest. Berezovksy v. Moniz, 869 F.3d 923, 927–31 (9th Cir. 2017). Under Berezovksy, summary  
21                  judgment based on the Federal Foreclosure Bar is warranted if the evidence establishes that the  
22                  enterprise had an interest in the property at the time of the HOA foreclosure sale. Id. at 932– 33.

23                  ///

1 The Court finds that the evidence establishes that Fannie Mae had an interest in the property at the  
2 time of the HOA foreclosure sale.

3 Despite Berezovsky, SFR attempts to avoid an unfavorable entry of summary judgment by  
4 arguing that Plaintiffs failed to establish an agency relationship with any beneficiary or servicer  
5 at the time of the foreclosure sale, that Plaintiffs failed to establish the chain of title, and that Fannie  
6 Mae cannot have a property interest because it was not the recorded beneficiary on the deed of  
7 trust on the date of the foreclosure sale. The Court addresses each argument in turn.

8  
9 The Court first considers the agency argument. FHFA supports its claim that Fannie Mae  
10 acquired the loan in April 2006 with a declaration from an assistant vice president, Graham Babin.  
11 Mr. Babin authenticates a printout from Fannie Mae's Servicer & Investor Reporting platform  
12 ("SIR"). The SIR system shows Fannie Mae acquired the loan on April 1, 2006. The printouts also  
13 clearly trace the history of servicers of the loan from BANA to Nationstar Mortgage, LLC. SFR  
14 argues that this evidence is insufficient to establish an agency relationship between BANA and  
15 Fannie Mae.  
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18 The Court disagrees. In Berezovsky, the Ninth Circuit found that the language of the Guide,  
19 combined with database printouts from Fannie Mae's internal database authenticated by an  
20 employee, were sufficient to establish both Fannie Mae's ownership of the loan and an agency  
21 relationship between the sponsored entity and the servicer. Id. at 932 n.8. In subsequent cases, the  
22 Ninth Circuit has continued to allow FHFA and the federal enterprises, such as Fannie Mae, to  
23 prove a property interest with materially identical evidence. See Elmer v. JPMorgan Chase & Co.,  
24 707 F.App'x 426, 428–29 (9th Cir. 2017) (unpublished); Fed. Home Loan Mortg. Corp. v. SFR  
25 Investments Pool 1, LLC, 893 F.3d 1136, 1149–50 (9th Cir. 2018). Likewise, and most  
26 importantly, the Nevada Supreme Court has allowed a federal enterprise under FHFA's  
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1 conservatorship to prove its property interest with materially identical evidence. Daisy Trust v.  
2 Wells Fargo Bank, N.A., 445 P.3d 846, 850 (Nev. 2019) (favorably citing Berezovsky). The Court  
3 thus rejects SFR's agency argument.

4  
5 SFR's chain of title and recordation arguments fail for similar reasons. SFR contends that  
6 Fannie Mae failed to record its interest in the property, listing itself as the record beneficiary under  
7 the deed of trust, as required by the Nevada's recording statutes. However, the case SFR  
8 Investments Pool 1, LLC v. Green Tree Servicing, LLC forecloses the argument. 432 P.3d 718  
9 (Nev. 2018) (holding the state recording statutes, prior to the 2011 amendments, do not require an  
10 assignment of beneficial interests under a deed of trust to be recorded and failure to record does  
11 not prevent an assignee from enforcing its interest later); see also Berezovsky, 869 F.3d at 932  
12 (discussing the interplay of the Federal Foreclosure Bar and NRS 106.210). Because Fannie Mae  
13 acquired the loan in 2006, the Nevada recording statutes did not require Fannie Mae to record the  
14 assignment of beneficial interests in the deed of trust in its name. SFR Investment Pool 1, 432  
15 P.3d 718. SFR's recordation and chain of title arguments fail accordingly.

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18 Based on the foregoing, the Court grants summary judgment in favor of Plaintiffs and  
19 declares that the Federal Foreclosure Bar prevented the foreclosure sale from extinguishing Fannie  
20 Mae's interest in the property. The Court finds this holding to be decisive as to all claims in this  
21 matter and dismisses the remaining claims as a result.

## 22 VI. CONCLUSION

23  
24 **IT IS THEREFORE ORDERED** that Plaintiffs Joint Motion for Summary Judgment  
25 (ECF No. 88) is GRANTED. The Court declares that any interest SFR has in the property is subject  
26 to Fannie Mae's Deed of Trust.

27 **IT IS FURTHER ORDERED** that Defendant Talasera and Vicanto Homeowners'  
28 Association's Motion for Summary Judgment (ECF No. 89) is denied as moot.

1 **IT IS FURTHER ORDERED** that Plaintiffs' lis pendens (ECF No. 9) is expunged.

2 The Clerk of the Court is instructed to close the case.

3 DATED: November 12, 2019.

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5 **RICHARD F. BOULWARE, II**  
6 **UNITED STATES DISTRICT JUDGE**